

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NUMBER 1:20CV66

JANE ROE,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)

DEFENDANTS' MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST THE INDIVIDUAL-CAPACITY DEFENDANTS

On behalf of Defendants General Counsel Sheryl L. Walter, Chief Judge Roger L. Gregory, Circuit Executive James N. Ishida, and Federal Public Defender Anthony Martinez, in their individual capacities, (collectively, "Defendants"), the undersigned counsel hereby move the Court for an extension of time of eleven days to file their opposition to Plaintiff's Motion for Partial Summary Judgment Against the Individual-Capacity Defendants, ECF No. 76. Defendants' response is currently due on October 15, 2020, and Defendants request an extension to and including October 26, 2020.

Good cause supports this motion. Plaintiff filed her complaint on March 3, 2020, and Defendants thereafter filed motions to dismiss raising various jurisdictional and non-jurisdictional grounds for dismissal of Plaintiff's claims, including qualified immunity defenses.¹ Those

¹ As stated in various prior filings throughout this litigation, qualified immunity is, in large part, a protection for immune defendants, like the individual defendants here, from having to go through the burdensome litigation process, including responding to motions such as Plaintiff's. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) ("unless the plaintiff's allegations state a claim for

motions to dismiss remain pending. As this case is still in its early stages, Defendants have not yet gathered all of the evidence necessary to respond to Plaintiff's second summary judgment motion. Accordingly, Defendants must now gather relevant documents and obtain declarations from additional witnesses, in order to oppose Plaintiff's motion. Although Defendants have already gathered some of the declarations and exhibits in response to Plaintiff's first summary judgment motion (relating to the official capacity claims and claims against the entity defendants), Plaintiff's latest summary judgment motion pertains to defendants in their individual capacities. Therefore, additional declarations will be required.

After the evidence is gathered, Defendants' counsel must then draft Defendants' opposition to Plaintiff's motion and have it reviewed by the several defendants in this case. This entire process is further complicated by the voluminous nature of Plaintiff's complaint, which contains 505 paragraphs of allegations. For some of the Defendants, coordination will be required with the United States Department of Justice in Washington, DC. The coordination and review process will likely take longer than normal because of the COVID-19 pandemic.

For all of these reasons, the undersigned hereby move the Court for an 11-day extension of time to file their reply briefs until and including October 26, 2020.

Pursuant to Local Civil Rule 7.1(b)(2), the undersigned conferred with Plaintiff's counsel regarding this Motion. Plaintiff's counsel stated "Absent an opportunity to review the proposed request, if the individual defendants do not intend to create an evidentiary record (including further declarations and exhibits) in support of their motion, then I consent. Otherwise, my position is similar to that provided for ECF No. 63." Specifically, 'Plaintiff's counsel does not oppose an

violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery."); *see e.g.*, ECF No. 34, 45, 57, 64, 75, and several other filings submitted by Defendants.

eleven (11) day extension of time for the purpose of drafting a response brief; however, Plaintiff's counsel does oppose any extension for the purpose of creating an evidentiary record in support of Defendants' response brief, which has not been produced in response to Plaintiff's discovery requests.'"

This the 7th day of October, 2020.

Respectfully submitted,

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